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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN M. ROBLES,

Defendant and Appellant.

2d Crim. No. B192816
(Super. Ct. No. MA034801)
(Los Angeles County)

PEREMPTORY WRIT OF MANDATE AND OPINION

JUAN M. ROBLES,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

2d Crim. No. B194071

Appellant Juan Robles pleaded no contest to one count of carjacking. As part of a plea agreement, he was sentenced to the lower term of three years in state prison.

After his codefendant was arrested and stated that Robles had nothing to do with the carjacking, Robles filed a motion to withdraw his plea. (Pen. Code, § 1018.)[1] The trial court denied the motion and subsequently denied his request for a certificate of probable cause. (§ 1237.5.)

Robles filed an appeal challenging the denial of his motion to withdraw his plea and a petition for writ of mandate from the order denying the certificate of probable cause. We notified the parties we would consider the writ petition with the appeal.

We grant the petition for writ of mandate and reverse the judgment of conviction with directions to grant Robles' motion to withdraw the guilty plea.

FACTS AND PROCEDURAL HISTORY

On March 16, 2006, Robles and a friend, Eloy Valencia, were drinking and playing pool at Sharkey's bar in Lancaster. When Robles and Valencia left the bar, they noticed two men who had left the bar before them sitting in a car parked nearby. At Valencia's request, Robles drove his Ford Explorer next to the car and stopped. Valencia suddenly took a BB gun from the console. Robles had earlier taken the gun away from his eight-year-old nephew. Robles watched as Valencia got out of the car, pointed the gun at the two men and ordered them out of their car. Valencia then got in their car and drove away. Robles followed Valencia in his own car. Robles later told police that he followed Valencia because he wanted to prevent him from doing something stupid. He followed Valencia to another bar, where Valencia parked the stolen car. Robles then drove Valencia home in his own car.

Robles was arrested the next day and arraigned three days later on March 20. When he told his appointed public defender these facts, his attorney told him he was involved as an accessory and, that if he went to trial, he would serve five to nine years. His attorney advised him to plead guilty and accept a sentence of three years in state prison. Based on his attorney's advice, Robles pleaded no contest to one count of carjacking.

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[1] All statutory references are to the Penal Code unless otherwise stated.

The following day, Valencia was arrested. Valencia told the police that Robles "had nothing to do with it." Upon learning of Valencia's statement, Robles hired a private attorney to seek to withdraw his no contest plea. The motion was filed prior to entry of judgment. The prosecution filed no opposition to the motion.

On June 15, the day set for hearing on the motion, the parties requested a continuance of the matter because the prosecutor did not have the file. The trial judge denied the continuance. The judge said she had reviewed the file and was leaving on vacation. She stated the plea transcript showed that Robles had freely, intelligently, and knowingly waived his constitutional rights and agreed to the plea. The trial judge stated that Robles' statements implicated him as the "wheelman" in the carjacking. Robles' counsel replied that Robles was not the "wheelman." The trial judge responded: "Well, this is something he's going to have to do on appeal." Defense counsel argued that it was not a knowing plea because Robles did not know he had a defense to the charge. The judge replied: "Then you'll win on appeal. The motion is denied." The court then proceeded to judgment and sentenced Robles to three years in prison.

Robles filed a notice of appeal and a statement of probable cause. In support of the certificate, Robles denied knowing Valencia was going to take the car, and that he entered his plea before he or his attorney knew that Valencia would exonerate him. Counsel indicated that Robles' plea was not knowingly or intelligently entered because he was unaware that he had a defense at the time of his plea. The court denied the certificate of probable cause, stating: "[T]he court finds the defendant knew, and told the court, that he was with the co-defendant at the time of the incident and that he was involved in the crime alleged."

Robles appealed challenging the denial of his motion to withdraw his plea and petitioned for writ of mandate from the order denying the certificate of probable cause. The district attorney submitted a letter brief in response to the petition for writ of mandate. The appeal has been fully briefed. The district attorney's respondent's brief addresses both the certificate of probable cause issue and the order denying the motion to withdraw the guilty plea.

We issued notice advising the parties of our intention to issue a preemptory writ of mandate directing the trial court to vacate its order and to enter an order granting the request for a certificate of probable cause. (Code Civ. Proc., § 1088; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232.) For the reasons stated below, we will deem the trial court's order denying Robles' request for a certificate of probable cause vacated and the certificate issued and consider his appeal from the order denying the motion to withdraw his guilty plea.

DISCUSSION

The Trial Court Erred in Refusing to Issue a Certificate of Probable Cause

"In order to appeal from a judgment of conviction in the superior court following a plea of guilty, a defendant must ordinarily comply with the provisions of Penal Code section 1237.5. . . . That section authorizes an appeal based on 'reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings' and establishes a procedure for effecting such an appeal. The trial court is empowered to review the statement of the grounds of the appeal to preclude those appeals which raise no issues cognizable after a guilty plea or which raise cognizable issues which are 'clearly frivolous and vexatious . . . .' [Citations.] [¶] It is not the trial court's responsibility to determine if there was an error in the proceedings. The trial court's sole objective is to eliminate those appeals 'having no possible legal basis' by refusing to issue a certificate of probable cause. [Citations.] Section 1237.5 requires the trial court to certify any arguably meritorious appeal in the appellate courts. Thus, if the statement submitted by the defendant in accordance with section 1237.5 presents any cognizable issue for appeal which is not *clearly* frivolous and vexatious, the trial court abuses its discretion if it fails to issue a certificate of probable cause." (*People v. Holland* (1978) 23 Cal.3d 77, 83-84, fn. omitted, overruled on other grounds.)

"Section 1237.5 is intended as a practical way of economizing judicial resources by screening out wholly frivolous guilty plea appeals before time and money are spent preparing the record and the briefs for consideration by the reviewing court." (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1179.)

The evidence submitted with Robles' statement of probable cause meets the low threshold for issuance of a certificate. The record reveals Robles entered the plea only three days after he was arrested. He did so on the advice of his public defender who told him that he was guilty on the facts and could be given a sentence of up to nine years if he went to trial.

Contrary to the trial court's characterization of the evidence, the record arguably shows Robles was not the "wheelman." The evidence that came to light after Robles entered his plea, his codefendant's statement that Robles was not involved in the carjacking, was exculpatory evidence that he did not know, nor could have known, at the time he entered his guilty plea.

The issue is not clearly vexatious or frivolous. Consequently, Robles is entitled to appropriate relief. We grant Robles' petition for a writ of mandate. Since we have the entire record before us, we deem the certificate of probable cause issued and address the issue raised on appeal.

The Trial Court Erred in Denying the Motion to Withdraw the No Contest Plea

A guilty or no contest plea may be withdrawn any time before judgment for good cause. (§ 1018.) "[Section 1018] is to be liberally construed and a plea of guilty may be withdrawn for mistake, ignorance, or inadvertence or any other factor overreaching defendant's free and clear judgment, [but] … must be established by clear and convincing evidence." (*People v. Waters* (1975) 52 Cal.App.3d 323, 328.) "When a defendant is represented by counsel, the grant or denial of an application to withdraw a plea is purely within the discretion of the trial court after consideration of all factors necessary to bring about a just result." (*People v. Shaw* (1998) 64 Cal.App.4th 492, 495-496.) An appellate court will not disturb a denial of a motion to withdraw a plea "unless the trial court has clearly abused its discretion." (*People v. Watts* (1977) 67 Cal.App.3d 173, 184.)

The purpose of section 1018 is to ensure that a defendant makes a voluntary and informed decision to accept a plea agreement and to provide redress when a defendant agrees to a plea under fraud, duress, or material mistake of fact. (*In re Vargas* (2000) 83 Cal.App.4th 1125, 1142.) Lack of knowledge of favorable evidence is an extrinsic cause

which may overcome the exercise of free judgment. (*People v. Dena* (1972) 25 Cal.App.3d 1001, 1009.)

In *People v. Ramirez* (2006) 141 Cal.App.4th 1501, 1506-1508, our colleagues in Division Eight recently held that the trial court abused its discretion in denying a motion to withdraw a no contest plea in circumstances similar to those here.

In *Ramirez,* the defendant pleaded no contest as part of a plea agreement when unaware of a supplemental police report containing exculpatory evidence. In the report, a witness indicated that another person was involved in the carjacking for which Ramirez was charged. The appellate court reversed and remanded to allow Ramirez an opportunity to withdraw his plea.

The court reasoned: "The new information was favorable to appellant and cast the case against him in a different light by significantly weakening the evidence supporting the carjacking charges. Appellant did not know when he entered his plea that the police had identified a witness who could testify in his favor. . . . [¶] . . . [¶] Appellant argues his ignorance of the second report materially affected his decision to accept the plea agreement. We agree that his showing was sufficient. Appellant's theory was that he pleaded no contest because of his mistaken belief that 'there was no favorable evidence to my case, that I had no way to fight my case, that I would lose the case . . . .' In reality, the police had identified a witness who could testify in appellant's favor as to the carjacking charges. . . . [¶] . . . [¶] Under these facts, we conclude the trial court abused its discretion in denying the motion to withdraw. As the court in *People v. McGarvy* [(1943) 61 Cal.App.2d 557, 564] proclaimed, 'the withdrawal of a plea of guilty should not be denied in any case where it is in the least evident that the ends of justice would be subserved by permitting the defendant to plead not guilty instead; and it has been held that the least surprise or influence causing a defendant to plead guilty when he has any defense at all should be sufficient cause to permit a change of plea from guilty to not guilty.'" (*People v. Ramirez, supra,* 141 Cal.App.4th at pp. 1506-1507.)

We agree with the reasoning and result in *Ramirez.* The applicable standard of review is abuse of discretion. But deference does not require abdication. Here, Robles,

with no prior criminal record either as an adult or as a juvenile, entered his plea of no contest within four days of the commission of the offense and his arrest. A day later his codefendant is arrested. He not only confesses to the crime but, in so doing, exonerates Robles. Upon learning of this, Robles, now armed with affirmative evidence of his innocence, retains new counsel who immediately moves to set aside the plea.

The dissent points to evidence that Robles is guilty of the offense for which he seeks to set aside his plea and urges that our holding today allows a "second bite at the apple" even years later. We believe, however, that the impact of evidence of innocence offered by the perpetrator ought to be considered by a fact finder at a trial without speculating that "appellant's chances of acquittal have [not] improved at all." Moreover, the apple from which the bite is sought is not eternally fresh. Section 1018 enjoins courts to liberally construe the application for relief before sentencing. Once sentence is pronounced, however, the rules change. (See, e.g., *People v. Thomas* (1955) 45 Cal.2d 433, 439 ["'An application for withdrawal of a guilty plea after judgment will be granted . . . only where there exists some fact that, had it been known to the court, would have prevented rendition of the judgment, which fact was not known to defendant at that time, and which, without fraud, mistake, or negligence of the defendant, was not presented to the court'"].)

We grant the petition for writ of mandate and reverse the judgment of conviction with directions to grant Robles' motion to withdraw the guilty plea.

NOT TO BE PUBLISHED.

PERREN, J.

I concur:

GILBERT, P.J

Yegan, J. Dissenting.

The majority opinion holds that the trial court abused its discretion as a matter of law by not granting the motion to withdraw the plea after appellant's friend and crime partner told the police that appellant "had nothing to do with this." I disagree. It is well-settled that the decision to deny a motion to withdraw a guilty plea rests in the sound discretion of the trial court. Its decision can only be reversed on appeal upon a showing that it is arbitrary, whimsical, or capricious. (Pen. Code, § 1018; *People v. Fairbank* (1997) 16 Cal.4th 1223, 1254; *Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1448-1449.) The majority opinion disregards this venerable rule and substitutes its discretion for that of the trial court. It also reweighs the evidence and, astonishingly, gives full credit to the crime partner's statement as if it were the gospel truth.

Substantial evidence supports the trial court's finding that there was no mistake, duress, or other factor overcoming appellant's free judgment to enter the change of plea. The police reports state that appellant and Eloy Valencia talked to the victim at a bar and waited outside. As the victim backed out of a parking spot, appellant drove up and stopped within two feet of the victim's truck. Appellant's passenger, Valencia, got out, threatened the victim with appellant's BB gun, and commandeered the victim's truck. Appellant was laughing and followed closely behind as Valencia drove the truck to another bar.

Valencia abandoned the truck and was driven home by appellant. A few minutes later, appellant was stopped with the BB gun inside the center consol of his car. Appellant claimed that he had been at his girlfriend's house the last couple of hours.

In a second interview, appellant admitted that he was at the carjacking but was only "trying to get his friend . . . out of trouble." Appellant

said that he parked 20 feet away from the victim and that Valencia, on impulse, assaulted the victim and took the truck as a gag.[1]

Appellant's account of the carjacking was at odds with the victim's statement and the statement of a second victim/witness. When appellant was confronted with these statements, he admitted that the victims were telling the truth.

The majority cite *People v. Ramirez* (2006) 141 Cal.App.4th 1501 for the principle that mistake, ignorance, or some other factor overcoming the defendant's exercise of free judgment is good cause for withdrawal of a guilty plea. There, the prosecution failed to turn over a supplemental police report in which a witness stated that another person committed the carjacking and that defendant was innocent. The prosecution had ample time to furnish the report to the defendant before the change of plea. The guilty plea was vacated because "[the] supplemental report identified new defense witnesses, potentially reduced appellant's custody exposure, and provided possible defenses to several charges, thereby casting the case against him in an entirely different light. Appellant suffered prejudice by his ignorance because earlier discovery of the report would have affected his decision to enter a plea before the preliminary hearing." (*Id*., at p. 1508.)

Unlike *Ramirez,* no witness statements or exculpatory evidence was withheld by the prosecution. Valencia was arrested the day after appellant entered a change of plea and told the police that appellant "had nothing to do with this." This fortuitous occurrence should not impeach a solemn guilty plea, entered upon the advice of counsel, and accepted by the superior court. It is common for a co-

[1] This spontaneous "lark of his own" defense seems pretty far-fetched, even on paper. There is another inference which may be drawn, i.e. Valencia and appellant conspired to do the carjacking and were lying in wait for the victim to leave the bar.

defendant to attempt to exonerate a friend and if appellant "had nothing to do with this," he knew this before Valencia made his statement. In my view, Valencia's statement is not worth the air it was uttered in. It certainly should not "drive" the vacation of a guilty plea in the Court of Appeal. Even at a subsequent trial, appellant could not compel Valencia to so testify. It is not likely that Valencia would do so voluntarily because such exoneration would be premised upon his admission that only he was guilty of carjacking. Finally, it is apparent that it has not affected the People's appraisal of this case. In other words, the People are not seeking to dismiss based upon the weight of this information. Just what appellant is to do with this statement is speculative at best.

Defense counsel advised appellant that even with Valencia's statement, appellant was an accessory and faced a maximum sentence of nine years state prison. It was sound advice.

Although appellant did not drive the victim's truck, he did aid and abet a carjacking. Appellant stopped next to the victim so that Valencia could jump out and surprise him with the BB gun. Valencia pointed the weapon at the victim and said: "Get out of the car mother fucker." Appellant laughed at the victims, helped Valencia's escape, and lied to the police. As reflected in the probation report, appellant could have stopped Valencia or at least stayed with the victim until the police arrived.

Appellant waived the preliminary hearing, entered a change of plea, and was sentenced to a three year low term. There is nothing in the record to indicate that he was duped or misled by anyone. Nor is appellant entitled a second bite at the apple. If the rule were otherwise, appellant could move to vacate his plea years later after his friend Valencia decided to tell the police that appellant "had nothing to do with [it]."

In *People v. Hunt* (1985) 174 Cal.App.3d 95, 103, we held: "Guilty pleas resulting from a bargain should not be set aside lightly and finality of

proceedings should be encouraged. [Citations.]" The rule is especially apposite where, as here, the evidence of guilt is strong and the defendant admits that the victims are telling the truth. A criminal defendant may not "enter a plea of guilty confident that if by some fortuitous circumstance his chances of an acquittal are substantially improved, he may thereafter withdraw his guilty plea as of right. [Citation.]" (*People v. Caruso* (1959) 174 Cal.App.2d 624, 642.) As indicated, I have serious doubts that appellant's chances of acquittal have improved at all.

I would affirm the judgment and deny the mandamus petition.

NOT FOR PUBLICATION.

YEGAN, J.

Carol C. Koppel, Judge

Superior Court County of Los Angeles

Linn Davis, under appointment by the Court of Appeal, for Defendant and Appellant and Petitioner.

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No appearance for Respondent Superior Court of Los Angeles County.